

CUSTOMER NO.: 24498
Serial No: 09/402,517
Final Office Action Dated: January 12, 2006

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants: James Edwin Hailey, et al.

Examiner: Lonsberry, Hunter B.

Serial No: 09/402,517

Group Art Unit: 2623

Filed: October 5, 1999

Docket: RCA88469

For: SYSTEM FOR AUTOMATICALLY FORMING A PROGRAM GUIDE FROM
INFORMATION DERIVED FROM MULTIPLE SOURCES

Mail Stop Appeal Brief-Patents
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Applicants appeal the status of claims 1, 4, 5, 8-18, and 21-26 as presented in response to the Office Action dated April 25, 2005, and finally rejected in the Office Action dated January 12, 2006 pursuant to the Notice of Appeal filed concurrently herewith and submit this appeal brief.

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CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

JUL 06 2007

TABLE OF CONTENTS:

1. Real Party in Interest
2. Related Appeals and Interferences
3. Status of Claims
4. Status of Amendments
5. Summary of Claimed Subject Matter
6. Grounds of Rejection to be Reviewed on Appeal
7. Argument

A. Introduction

B. Whether Claim 1 is Unpatentable Under 35 U.S.C. §103(a)/35 U.S.C. §102(e)
by Hofmann (U.S. Patent No. 5,883,667) in view of Sampsell (U.S. Patent No. 6,219,839).

B1. Claim 1 is not obvious over the cited combination of Hofmann and Sampsell,
as Sampsell is not a prior art reference.

B2. Hofmann alone does not render claim 1 unpatentable because Hofmann does
not disclose or render obvious the feature of incorporating program content information from
a peripheral storage device into a program guide containing broadcast program information
from traditional broadcast service providers.

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

C. Whether Claim 11 Is Unpatentable Under 35 U.S.C. §103(a)/35 U.S.C. §102(e) by Hofmann in view of Sampsell.

D. Whether Claim 17 Is Unpatentable Under 35 U.S.C. §103(a)/35 U.S.C. §102(e) by Hofmann in view of Sampsell and in further view of Yen.

D1. Hofmann in view of Yen does not render claim 17 obvious, as their combination by one of ordinary skill in the art fails to yield the feature of incorporating program content information from both a peripheral storage device and a different source into a composite program guide.

D2. The combination of Hofmann and Yen is not sufficient to render claim 17 prima facie obvious, as the combination of the alert system feature disclosed in Yen into the program guide disclosed in Hofmann would change the principle of operation of Hofmann.

E. Conclusion

8. CLAIMS APPENDIX

9. RELATED EVIDENCE APPENDIX

10. RELATING PROCEEDINGS APPENDIX

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469 RECEIVED
CENTRAL FAX CENTER

JUL 06 2007

1. Real Party in Interest

The real party in interest is THOMSON LICENSING S.A., the assignee of the entire right title and interest in and to the subject application by virtue of an assignment recorded with the Patent Office on [TBD] at reel/frame [TBD].

2. Related Appeals and Interferences

None.

3. Status of Claims

Claims 1, 4, 5, 8-18 and 21-26 are pending. Claims 1, 4, 5, 8-18, and 21-26 stand rejected and are under appeal.

A copy of the claims 1, 4, 5, 8-18 and 21-26 is presented in Section 8 below.

4. Status of Amendments

An amendment under 37 CFR §1.111, mailed to the PTO on October 25, 2005, in response to the non-final Office Action dated April 25, 2005, was entered. No Responses/Amendments were filed subsequent to the above Amendment mailed on October 25, 2005.

5. Summary of Claimed Subject Matter

Claim 1 is directed to a method for forming a composite program guide for program content available from a plurality of sources in a video decoder system (see claim 1,

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

preamble). The subject matter of claim 1 is described, e.g., at: Specification, p. 11, lines 6-20; p.13, lines 30-33; p. 25, lines 29-36 to p. 26, lines 1-2; p. 26, lines 9-11 and lines 14-29; p. 10, lines 3-28; p. 8, lines 16-23; and p. 10, lines 3-28. Moreover, the subject matter of claim 1 involves, e.g.: elements 10, 15, 20, 25, 30, 75, 80, 83, 90, 95, 105 and 115 of FIG. 1; 850, 870, 835 and 859 of Fig. 2; 205, 210, 215, 220 and 225 of Fig.4; 305, 310, 335, and 345 of Fig. 5; and 405, 415, 420, 425, 430, and 435 of Fig. 6.

Claim 11 is directed to a method for forming a composite program guide for program content available from a plurality of sources in a video decoder system wherein a peripheral device is identified prior to initiating communication to the peripheral device (see claim 11). The subject matter of Claim 11 is described, e.g., at: p. 25, lines 29-36 to p. 26, lines 1-2; p. 26, lines 9-11 and lines 14-29; p. 10, lines 3-28; p. 8, lines 16-23; and p. 10, lines 3-28. Moreover, the subject matter of Claim 11 involves, e.g.: elements 10, 15, 20, 25, 30, 75, 80, 83, 90, 95, 105 and 115 of FIG. 1; 850, 870, 835 and 859 of FIG. 2; and 405, 415, 420, 425, 430, and 435 of FIG. 6.

Claim 17 is directed to a method for forming a composite program guide for program content available from a plurality of sources in a video decoder system, wherein a first program content source is accessed via the internet (see claim 17). The subject matter of claim 17 is described, e.g., at: Specification, p. 25, lines 29-36 to p. 26, lines 1-13; p. 26, lines 14-29; p. 10, lines 3-28; p. 8, lines 16-23 and lines 24-33; and p. 6, lines 5-10). Moreover, the subject matter of claim 17 involves, e.g.: elements 10, 15, 20, 25, 30, 75, 80, 83, 87, 90, 95, 105 and 115 of FIG. 1; 840, 860, 850 and 870 of FIG. 2; 405, 415, 420, 425, 430, and 435 of FIG. 6; and 605, 610, 620, 625, and 630 of FIG. 9).

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

6. Grounds of Rejection to be Reviewed on Appeal

Claims 1, 4, 9-12, 16 and 21-24 stand rejected under 35 U.S.C. §103(a)/35 U.S.C. §102(e) by Hofmann (U.S. Patent No. 5,883,667) (hereinafter 'Hofmann') in view of Sampsell (U.S. Patent No. 6,219,839) (hereinafter 'Sampsell').

Claims 5, 8, and 13-15 stand rejected under 35 U.S.C. §103(a)/35 U.S.C. §102(e) by Hofmann in view of Sampsell in further view of Goff (U.S. Patent No. 5,835,791) (hereinafter 'Goff').

Claims 17-18 and 25-26 stand rejected under 35 U.S.C. §103(a)/35 U.S.C. §102(e) by Hofmann in view of Sampsell in further view of Yen (U.S. Patent No. 5,991,799) (hereinafter 'Yen').

The preceding rejections are presented for review in this Appeal.

Regarding the grouping of the claims, due to their respective dependencies, claims 1, 4, 5, 8-10, 21 and 22 stand or fall with claim 1; claims 12-16, 23 and 24 stand or fall with claim 11; and claims 18, 25 and 26 stand or fall with claim 17.

7. Argument

A. Introduction

In general, the present principles are directed to a video decoder system and method for forming a composite program guide for program content available from a plurality of sources. As disclosed in the Applicants' specification, an aspect of the present principles includes obtaining program content information from a peripheral device attached to the decoder system (see

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

Specification, p. 26, lines 14-21). The peripheral device stores both program content and program content information, which is incorporated by the decoder into a composite program guide including programming information from sources of broadcast program content, such as cable or satellite television providers, in addition to the program content information retrieved from the peripheral device (see, e.g., Specification, p. 7, lines 2-6; p. 26, lines 13-25; elements 850, 870, 835 and 859, FIG. 2). Examples of such peripheral devices include DVD players and other storage devices (see, e.g. Specification, p. 7, lines 2-6; p. 26, lines 13-25; Elements 90, 105 and 83, FIG. 1).

The claims of the pending invention include novel features not shown in the cited references and have already been pointed out to the examiner. It is respectfully asserted that Claims 1, 4, 5, 8-18, and 21-26 are patentably distinct and non-obvious over the cited references, as will be shown herein below.

B. Whether Claim 1 is Unpatentable Under 35 U.S.C. §103(a)/35 U.S.C. §102(e) by Hofmann (U.S. Patent No. 5,883,667) in view of Sampsell (U.S. Patent No. 6,219,839).

Claim 1 is patentable, as the formation of a composite program guide including program content information from both a peripheral storage device and another source is not obvious. First, the combination of Hofmann and Sampsell does not render claim 1 obvious because Sampsell is not a prior art reference. Second, Hofmann alone does not render Claim 1 unpatentable, as one of ordinary skill in the art would fail to recognize from Hofmann the feature of incorporating program content information from a peripheral storage device into a

RECEIVED
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CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

JUL 06 2007

program guide further including broadcast program content information from traditional broadcast sources. Accordingly, claim 1 is patentable. In addition, "[i]f an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious" (MPEP §2143.03, citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)). Thus, claims 4, 5, 8-10, 21 and 22 are also patentable due at least to their dependencies on claim 1.

B1. Claim 1 is not obvious over the cited combination of Hofmann and Sampsell, as Sampsell is not a prior art reference.

The combination of Hofmann and Sampsell does not render claim 1 obvious at least because Sampsell is not a prior art reference. The examiner has admitted that Hofmann fails to disclose incorporating into a program guide program information from a peripheral device that stores program content and related information (see Office Action dated January 12, 2006, p. 3, paragraph 6). To complete the obviousness rejection of claim 1, the examiner has cited Sampsell in combination with Hofmann to assert the purported obviousness of incorporating a program content information from a peripheral storage device into a composite program guide including program content information from other sources (see Office Action dated January 12, 2006, p. 4, paragraphs 1-2).

However, Sampsell cannot be a basis of a rejection of claim 1, as the priority date of Sampsell is well after the international filing date of the application. Under 35 U.S.C. 363, "[a]n international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in section

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

102(e) of this title.” The application at issue in this appeal was filed under the PCT treaty on September 23, 1997 and designated the United States. The earliest priority date of the Sampsell patent is May 12, 1998. Accordingly, Sampsell may not be a basis of a rejection of claim 1, as the earliest Sampsell priority date is after the international filing date of the application at issue.

Thus, Claim 1 is patentably distinct and non-obvious over the combination of the cited references for at least the reasons set forth above. Therefore, withdrawal of the rejection and allowance of claim 1, and claims 4, 5, 8-10, 21 and 22 due to their dependencies on claim 1, is earnestly requested.

B2. Hofmann alone does not render claim 1 unpatentable because Hofmann does not disclose or render obvious the feature of incorporating program content information from a peripheral storage device into a program guide containing broadcast program information from traditional broadcast service providers.

Claim 1 is patentable over Hofmann alone, as Hofmann does not disclose or render obvious the feature of including broadcast content information from a peripheral storage device into the program guide described in Hofmann. The program guide disclosed in Hofmann contains program guide information from traditional broadcast providers such as cable television providers, telephone companies, and direct broadcast satellite providers (Hofmann, FIGS. 9A-9B). Hofmann does not disclose, as the examiner admits, program guides that include program information from both peripheral devices that store program content and traditional broadcast providers (see Office Action dated January 12, 2006, p. 3,

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

paragraph 6). Moreover, one of ordinary skill in the art would not devise a feature of incorporating program content information from a peripheral device that stores program content, such as a DVD player device, into a broadcast program guide that informs a user of the time and date on which programs will be broadcast from traditional broadcast program providers, as disclosed in Hofmann.

Claim 1 includes the feature of incorporating program content information from a peripheral storage device into a composite program guide including information from several sources. Specifically, claim 1 includes, inter alia: "In a video decoder system for receiving program guide information from a first source, a method for forming a composite program guide for program content available from a plurality of sources, comprising the steps of: . . . b) initiating communication automatically between said decoder and a second source external to said video decoder using . . . wherein said second source is a peripheral device coupled to said video decoder; said second source stores programming content and program information related to said program content available from said peripheral device; c) retrieving said program information from said second source; and d) incorporating said program information provided by said first and second sources into a program guide for display."

Accordingly, claim 1 is patentably distinct from Hofmann at least because it would not be obvious to one of ordinary skill in the art to modify the program guide disclosed in Hofmann to include program content information from a peripheral storage device. Moreover, claims 4, 5 and 8-10 are also patentably distinct from Hofmann due at least to their dependencies on claim 1. Thus, withdrawal of the rejection and allowance of claim 1, 4, 5, 8-10, 21 and 22 is respectfully requested.

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

C. Whether Claim 11 Is Unpatentable Under 35 U.S.C. §103(a)/35 U.S.C. §102(e) by Hofmann in view of Sampsell.

Claim 11 is patentable over Hofmann in view of Sampsell for substantially the same reasons discussed above regarding claim 1, as claim 11 also includes the feature of incorporating program information from both a peripheral storage device and another source into a composite program guide. Claim 11 includes, inter alia: “[i]n a video decoder system for receiving program guide information from a first source, a method for forming a program guide for program content available from a plurality of sources, comprising the steps of: a) automatically identifying a peripheral device attached to said decoder . . .; b) initiating communication between said decoder and said peripheral device attached to said decoder, wherein said peripheral device stores programming content and program information related to said program content available from said peripheral device; c) retrieving program information stored in said peripheral device; and d) incorporating said program information provided by said first source and peripheral device into a program guide for display.”

Accordingly, claim 11 is patentable over Hofmann in view of Sampsell for at least the reasons stated above. In addition, claims 12-16, 23 and 24 are patentable at least because they are dependent on claim 11. Thus, withdrawal of the rejection and allowance of the claims are respectfully requested.

D. Whether Claim 17 Is Unpatentable Under 35 U.S.C. §103(a)/35 U.S.C. §102(e) by Hofmann in view of Sampsell and in further view of Yen.

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

Claim 17 is patentable over Hofmann in view of Sampsell and in further view of Yen because the cited references, either singularly or in any combination, fail to render claim 15 obvious. As discussed above regarding claim 1, Sampsell may not be a basis for a rejection of any of the claims that are the subject of the appeal, as it is not a prior art reference. In addition, claim 17 is not obvious over Hoffman in view of Yen because combination of the references by one of ordinary skill in the art would not result in a composite program guide comprising program content information from both a peripheral storage device and a different source. Moreover, claim 17 is not *prima facie* obvious over the prior art references because modifying the program guide described in Hofmann to include the alert system disclosed in Yen would change the principle of operation of Hofmann. Accordingly claim 17 is patentable over Hofmann in view of Sampsell and in further view of Yen. Further, claims 18, 25 and 26 are also patentable due at least to their dependencies on claim 17.

D1. Hofmann in view of Yen does not render claim 17 obvious, as their combination by one of ordinary skill in the art fails to yield the feature of incorporating program content information from both a peripheral storage device and a different source into a composite program guide.

Claim 17 is patentable because combination of Hofmann and Yen by one of ordinary skill in the art would not result in a program guide that includes program content information from a peripheral storage device and from another source. As stated above, Hofmann discloses a program guide that contains program content information from a variety of broadcast sources such as cable television providers, telephone companies, and direct

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

broadcast satellite providers (see Hofmann, FIGS. 9A-9B). Hofmann, as discussed above, does not disclose or render obvious the feature of incorporating program content information from both a peripheral storage device and a different source into a composite program guide. In addition, Yen was cited by the examiner merely to assert that the feature of accessing the first source via the internet using request access data was known and that its combination with Hofmann and Sampsell was obvious (Office Action dated January 12, 2006, p. 12, paragraphs 2-5). Yen does not disclose anything remotely related to a program guide.

Yen discloses an alert system that presents information that a user would likely consider interesting (see Yen, abstract). The system disclosed in Yen comprises a background element that scans information from sources such as cable television providers, direct broadcast satellite providers and the internet (see Yen, 121, 111 and 112 of FIG. 1; column 4, lines 34-36; and column 5, lines 55-61). When the background element discovers information it deems likely to be interesting to a user, "... the background element 121 alerts the foreground element 122 to interrupt any ongoing presentation, or to enter an active mode for presentation, so as to bring the item to the attention of the recipient. To do so, the foreground element 122 presents an indicator for the item, or for sufficiently high interest values, immediately presents the item itself, to the recipient." (see Yen, column 11, lines 46-52). Thus, the system of Yen essentially acts as a filter for information that is displayed to the user in a way akin to a "pop-up." Yen does not disclose a program guide.

Combination of Hoffman and Yen by one of ordinary skill in the art would not result in integration of any information filtered by Yen into the program guide of Hofmann. The combination would simply yield a program guide exactly as disclosed in Hoffman with a

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CENTRAL FAX CENTER

CUSTOMER NO.: 24498

Serial No.: 09/402,517

Final Office Action Dated: January 12, 2006

PATENT
RCA88469

JUL 06 2007

separate alert system. As discussed above regarding the rejection of claim 1, the program guide of Hofmann does not render obvious the feature of incorporating program content information from both a peripheral storage device and a different source into a composite program guide.

Claim 17 includes the same feature of incorporating program guide information from a peripheral storage device into a program guide including information from a different source.

Claim 17 includes, inter alia: “[i]n a video decoder system for receiving program guide information from a first source, a method for forming a program guide for program content available from a plurality of sources, comprising the steps of: a) automatically initiating communication between said decoder and a peripheral device attached to said decoder . . . b) retrieving program information from said peripheral device, wherein said peripheral device stores programming content and program information related to said program content available from said peripheral device; and c) incorporating said program guide information provided by said first source and peripheral device into a program guide for display, wherein said first source is accessed via the Internet using access data.”

Accordingly, claim 17 is patentable, as the combination of Hofmann and Yen fail to render obvious the feature of incorporating program content information from both a peripheral storage device and a different source into a composite program guide. Thus, withdrawal of the rejection and allowance of claim 17 is respectfully requested for at least the reasons stated above. In addition, the applicants respectfully request the withdrawal of the rejections and allowance of claims 18, 25 and 26 due at least to their dependencies on claim 17.

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

D2. The combination of Hofmann and Yen is not sufficient to render claim 17 prima facie obvious, as the combination of the alert system feature disclosed in Yen into the program guide disclosed in Hofmann would change the principle of operation of Hofmann.

Claim 17 is patentable over Hofmann in view of Yen because combination of the alert system described in Yen into the program guide of Hofmann would change the principle of operation of Hofmann. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." MPEP §2143.01 (citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). The principle of operation of a program guide as disclosed in Hofmann is to present information about available programs to a user and allow a user to choose the programs she wishes to view. As discussed above, Yen describes a system that filters information before presenting it to the user. Consequently, to some degree, the system chooses the available programs that the user may view. Accordingly, combination of the system disclosed in Yen into the program guide described in Hofmann would change the principle of operation of Hofmann. Thus, the combination of Hofmann and Yen is insufficient to render claim 17 prima facie obvious.

Therefore, claim 17 is patentable for at least the reasons stated above. Moreover, claims 18, 25 and 26 are patentable due at least to their dependencies on claim 17. Withdrawal of the rejections and allowance of claims 17, 18, 25 and 26 is respectfully requested.

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

E. Conclusion

At least the above-identified limitations of the pending claims are not disclosed or rendered obvious by the teachings of the references cited by the examiner. Accordingly, it is respectfully requested that the Board reverse the rejection of claims 1, 4, 5, 8-18 and 21-26 under 35 U.S.C. §103(a).

Please charge the amount of \$500.00, covering fee associated with the filing of the Appeal Brief and the fee for \$1500.00 to revive this application, to **Thomson Licensing Inc., Deposit Account No. 07-0832**. In the event of any non-payment or improper payment of a required fee, the Commissioner is authorized to charge **Deposit Account No. 07-0832** as required to correct the error.

Respectfully submitted,

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CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

JUL 06 2007

8. CLAIMS APPENDIX

1. (Previously Presented) In a video decoder system for receiving program guide information from a first source, a method for forming a composite program guide for program content available from a plurality of sources, comprising the steps of:

- a) retrieving access data from memory;
- b) initiating communication automatically between said decoder and a second source external to said video decoder using said access data; said communication being initiated by said decoder independently of a user command associated with a program or service selection, wherein

said second source is a peripheral device coupled to said video decoder;
said second source stores programming content and program information related to said program content available from said peripheral device

- c) retrieving said program information from said second source; and
- d) incorporating said program information provided by said first and second sources into a program guide for display.

2. (Canceled)

3. (Canceled)

4. (Previously Presented) A method according to claim 1 wherein, in step (b)

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

said communication is initiated in response to at least one of: a) power-up of said decoder, and b) power-up of said peripheral device.

5. (Original) A method according to claim 1 further including the step of detecting a change in number or type of peripheral devices connected to said decoder.

6. (Canceled)

7. (Canceled)

8. (Previously Presented) A method according to claim 5 wherein said change is detected in response to configuration data identifying said peripheral device attached to said decoder and provided from received program guide information.

9. (Previously Presented) A method according to claim 1 wherein said step of initiating communication is performed in response to pre-stored configuration data identifying said peripheral device attached to said decoder.

10. (Previously Presented) A method according to claim 1 wherein said first source is one of a) a satellite broadcast source, b) a terrestrial broadcast source, and c) a cable broadcast source, and said second source is one of a) a storage source, b) a digital versatile disc (DVD)

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

player, and c) a server.

11. (Previously Presented) In a video decoder system for receiving program guide information from a first source, a method for forming a program guide for program content available from a plurality of sources, comprising the steps of:

- a) automatically identifying a peripheral device attached to said decoder, said identification being initiated by said decoder independently of a user command associated with a program or service selection;
- b) initiating communication between said decoder and said peripheral device attached to said decoder, wherein said peripheral device stores programming content and program information related to said program content available from said peripheral device;
- c) retrieving program information stored in said peripheral device; and
- d) incorporating said program information provided by said first source and peripheral device into a program guide for display.

12. (Previously Presented) A method according to claim 11 wherein, in step a) said peripheral device is identified from configuration information derived from one of: a) pre-stored data in internal memory of said decoder, b) data entered by a User, and c) said program guide information received from said first source.

13. (Original) A method according to claim 11 further including the step of polling via a decoder communication link to determine whether said peripheral device

CUSTOMER NO.: 24498
Serial No: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

is attached to said decoder link.

14. (Original) A method according to claim 11 further including the step of identifying a change in number or type of peripheral devices connected to said decoder.

15. (Original) A method according to claim 14 wherein in step (c) said communication is initiated in response to said change.

16. (Original) A method according to claim 11 wherein said peripheral device is one of a) a storage device, b) a DVD player, and c) a server.

17. (Previously Presented) In a video decoder system for receiving program guide information from a first source, a method for forming a program guide for program content available from a plurality of sources, comprising the steps of:

a) automatically initiating communication between said decoder and a peripheral device attached to said decoder in response to at least one of the following conditions: i) power-up of said decoder, ii) power-up of said attached peripheral device, iii) repetitive pre-programmed command from a decoder processor, iv) change in number of attached peripheral devices, and v) change in type of attached peripheral devices;

b) retrieving program information from said peripheral device, wherein said peripheral device stores programming content and program information related to said program content

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

available from said peripheral device; and

c) incorporating said program guide information provided by said first source and peripheral device into a program guide for display, wherein said first source is accessed via the Internet using access data.

18. (Previously Presented) A method according to claim 17 wherein said access data comprises a uniform resource locator.

19. (Canceled)

20. (Canceled)

21. (Previously Presented) The method of Claim 1 comprising an additional step of:

e) requesting said stored programming content from said peripheral device in response to selecting an entry that corresponds to said programming content displayed in said program guide.

22. (Previously Presented) The method of Claim 21, comprising an additional step of:

f) decoding said programming content that is received from said peripheral device that was requested in step e.

23. (Previously Presented) The method of Claim 11 comprising an additional step of:

e) requesting said stored programming content from said peripheral device in response

CUSTOMER NO.: 24498
Serial No.: 09/402,517
Final Office Action Dated: January 12, 2006

PATENT
RCA88469

to selecting an entry that corresponds to said programming content displayed in said program guide.

24. (Previously Presented) The method of Claim 23, comprising an additional step of:

f) decoding said programming content that is received from said peripheral device that was requested in step e.

25. (Previously Presented) The method of Claim 17 comprising an additional step of:

d) requesting said stored programming content from said peripheral device in response to selecting an entry that corresponds to said programming content displayed in said program guide.

26. (Previously Presented) The method of Claim 25, comprising an additional step of:

e) decoding said programming content that is received from said peripheral device that was requested in step e.

CUSTOMER NO.: 24498

Serial No.: 09/402,517

Final Office Action Dated: January 12, 2006

PATENT

RCA88469

9. RELATED EVIDENCE APPENDIX

None.

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CENTRAL FAX CENTER

PATENT
RCA88469

JUL 06 2007

CUSTOMER NO.: 24498

Serial No.: 09/402,517

Final Office Action Dated: January 12, 2006

10. RELATED PROCEEDINGS APPENDIX

None